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11-30-2020

### State v. Christiansen Appellant's Brief Dckt. 47828

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47828-2020
Plaintiff-Respondent,	)	
	)	BONNEVILLE COUNTY
v.	)	NO. CR10-19-1787
	)	
DWAYNE C. CHRISTIANSEN,	)	APPELLANT’S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Dwayne Christiansen was convicted of possession of a controlled substance following a jury trial, and was sentenced to a unified term of six years, with two years fixed. Mr. Christiansen appeals from his judgment of conviction, arguing the district court abused its discretion when it suspended his sentence rather than entering a withheld judgment.

Statement of Facts and Course of Proceedings

On February 6, 2019, a woman found a black sunglasses case lying on the ground in the parking lot outside the Family First Medical Clinic in Bonneville County, Idaho. (Tr., p.58, L.22

– p.59, L.2; State’s Ex. 1.) The woman gave the case to the receptionist at the clinic. (Tr., p.60, Ls.2-5) The case contained a pipe and two plastic bags containing methamphetamine. (Tr., p.67, L.18 – p.68, L.11, p.81, Ls.3-6.) The police determined the case fell out of a vehicle owned and driven by Mr. Christiansen. (Tr., p.75, Ls.4-22.) The officer who investigated the incident testified that “when he opened up the door and made a move to step out, that black case fell on the ground.” (Tr., p.95, L.23 – p.96, L.1.)

Mr. Christiansen was charged by Information with felony possession of a controlled substance and misdemeanor possession of drug paraphernalia. (R., pp.34-35.) The case was tried to a jury. (R., pp.65-73.) Mr. Christiansen testified that he drove Elizabeth Clegg to the Family First Medical Clinic, and was waiting for her with Nevada Chavez, when he found the glasses case in the back of his truck, while looking for a bottle of pop. (Tr., p.133, L.20 – p.134, L.19.) He opened the case, saw the pipe and baggies inside, “was pretty upset,” and intentionally dropped the case out of his truck door. (Tr., p.137, Ls.4-20.) He tried to run over the case when he left the clinic. (Tr., p.139, Ls.20-25.) Ms. Chavez told him Ms. Clegg “was looking for that case” later, and his truck “looked like it had been ransacked.” (Tr., p.139, Ls.11-15.) Ms. Clegg called the clinic later and asked if anyone found a glasses case, but was told no. (Tr., p.140, Ls.9-25.) Ms. Chavez died in a car crash prior to trial, and thus was not available to testify. (Tr., p.145, Ls.7-13.) The prosecution did not present any evidence that Mr. Christiansen used drugs, or that the glasses case belonged to him, but argued he was guilty of possession “by his own testimony.” (Tr., p.169, Ls.10-14.)

The jury found Mr. Christiansen guilty of possession of a controlled substance, and not guilty of possession of drug paraphernalia. (Tr., p.183, Ls.19-25; R., p.77.) The district court sentenced Mr. Christiansen to a unified term of six years, with two years fixed, and then

suspended his sentence and placed him on probation for a term of six years. ((Tr., p.232, Ls.6-16; R., pp.84-86.) The judgment of conviction was entered on January 10, 2020, and Mr. Christiansen filed a timely notice of appeal on February 19, 2020. (R., pp.87-97.)

### ISSUE

Did the district court abuse its discretion when it suspended Mr. Christiansen's sentence rather than entering a withheld judgment?

### ARGUMENT

#### The District Court Abused Its Discretion When It Suspended Mr. Christiansen's Sentence Rather Than Entering A Withheld Judgment

This Court reviews sentencing decision for an abuse of discretion. *State v. McIntosh*, 160 Idaho 1, 8 (2016). This Court considers whether the trial court: “(1) correctly perceived the issue as one of discretion; (2) acted within the boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by an exercise of reason.” *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018).

After a person has been convicted of a crime, the district court may, in its discretion, withhold judgment pursuant to Idaho Code § 19-2601(3). *See State v. Edghill*, 134 Idaho 218, 219 (Ct. App. 2000). When the court withholds judgment, it may place the defendant on probation under such terms and conditions as it deems necessary. *See State v. Dunne*, 166 Idaho 541 (Ct. App. 2020). A district court abuses its discretion in refusing to grant a withheld judgment if it does not have sufficient information to determine a withheld judgment would be inappropriate. *See Edghill*, 134 Idaho at 219; *see also State v. Geier*, 109 Idaho 963, 965 (Ct. App. 1985).

Mr. Christiansen requested a withheld judgment at sentencing, *see* Tr., p.215, Ls.23-25, and the district court did not have sufficient information to determine a withheld judgment would be inappropriate. This was Mr. Christiansen's first felony conviction. (Conf. Exs., p.15.) Mr. Christiansen has a truly supportive family, steady employment, and strong ties to the area. (*See* Tr., pp.211-15.) As his attorney told the court at sentencing, Mr. Christiansen "is a very caring individual, is a very supporting individual of those around him, is a very generous and charitable and giving individual." (Tr., p.211, Ls.2-9.)

Mr. Christiansen has struggled with methamphetamine for an extended period of time, but has never participated in substance abuse treatment. (Conf. Exs., p.15.) The presentence evaluator recommended intensive outpatient treatment, which might make a real difference in Mr. Christiansen's life. (*See* Conf. Exs., p.15.) By withholding judgment, the district court could have allowed Mr. Christiansen a meaningful chance at treatment, without the burden of a felony conviction. The district court could still have placed Mr. Christiansen on probation under the terms and conditions it felt appropriate. The district court abused its discretion in failing to withhold judgment based on the information available to it at sentencing.

#### CONCLUSION

Mr. Christiansen respectfully requests that this Court reduce his sentence at it deems appropriate, or remand this case to the district court for a new sentencing hearing.

DATED this 30<sup>th</sup> day of November, 2020.

/s/ Andrea W. Reynolds  
ANDREA W. REYNOLDS  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30<sup>th</sup> day of November, 2020, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

DANE H. WATKINS JR.  
DISTRICT COURT JUDGE  
E-Service: [dwatkins@co.bonneville.id.us](mailto:dwatkins@co.bonneville.id.us)

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/s/ Kylie M. Fournier  
KYLIE M. Fournier  
Administrative Assistant

AWR/kmf